

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR 05-060

:

-against- :

VINCENT BASCIANO, et al., : United States Courthouse  
Brooklyn, New York

Defendant. : July 11, 2006  
9:30 o'clock a.m.

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TRANSCRIPT OF CONFERENCE  
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ROSLYNN R. MAUSKOPF  
United States Attorney  
BY: WINSTON CHAN  
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Attorney for A. Indelicato

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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

THE CLERK: United States versus Basciano, et al.

THE COURT: All right. Appearances for the  
government.

MR. CHAN: Winston Chan for the United States.  
Good morning, Your Honor.

THE COURT: For Vincent Basciano?

MR. SAVITT: Ephraim Savitt.  
Good morning, Your Honor.

THE COURT: Good morning.

Good morning, Mr. Basciano.

For Michael Mancuso?

MR. SCHOEN: David Schoen, Your Honor.

1 THE COURT: Good morning.

2 Mr. Mancuso, good morning.

3 Anthony Indelicato?

4 MR. DINNERSTEIN: Your Honor, is that Mr. Reeve? Is  
5 that Mr. Reeve?

6 THE COURT: Mr. Reeve.

7 MR. DINNERSTEIN: Mr. Reeve is here. I guess he  
8 went out into the hall. I went to look for him. I didn't  
9 find him. I presume he is --

10 THE COURT: Let's go on.

11 Where is Mr. Indelicato?

12 Good morning, sir.

13 For Anthony Donato?

14 MR. SERCARZ: Maurice Sercarz, Your Honor.

15 Good morning.

16 THE COURT: Good morning.

17 MR. DINNERSTEIN: And Mitchell Dinnerstein.

18 THE COURT: Okay.

19 Good morning, Mr. Donato.

20 For Anthony Aiello?

21 MR. GINSBERG: Lee Ginsberg appearing for  
22 Mr. Aiello.

23 THE COURT: Okay.

24 Mr. Aiello, good morning.

25 And Vincenzo Masi?

1 MR. STORCH: Oliver Storch.

2 Good morning, Your Honor.

3 THE COURT: Good morning, Mr. Masi.

4 All right. Where were we?

5 MR. DINNERSTEIN: Mr. Reeve.

6 THE COURT: Mr. Reeve?

7 MR. REEVE: Apologies, Your Honor.

8 Good morning.

9 THE COURT: Welcome to my court.

10 All right.

11 MR. CHAN: Judge, we are here on a status conference  
12 that was scheduled awhile ago, before we had that status  
13 conference three or four weeks ago. The government has no new  
14 business for today.

15 THE COURT: All right. I'm sure there is something.  
16 What's going on? I want to know, let's put on the record,  
17 what the schedule is for the submission of the materials on  
18 mitigation for the Attorney General.

19 MR. CHAN: Your Honor, the deadline is August 21st  
20 for the defendants who have not yet submitted their mitigation  
21 submissions to the government. The government estimates that  
22 it would take us about a month or so to develop a  
23 recommendation within our office and to submit it to the  
24 Department of Justice and they take generally about two or  
25 three months to give us an answer. We are estimating that

1 about January we will have decisions on all the defendants.

2 THE COURT: Mr. Basciano has submitted, is that  
3 right?

4 MR. CHAN: That is correct.

5 MR. SAVITT: Yes, Your Honor.

6 We may supplement, however.

7 THE COURT: You have until August 21st.

8 MR. CHAN: That's right.

9 THE COURT: Then as to Mr. Mancuso, Mr. Schoen?

10 MR. SCHOEN: Mr. Lewis is working on that aspect of  
11 the case, Your Honor. He had a conflict with another court  
12 today. He wasn't able to be here.

13 THE COURT: All right. You will be ready by that  
14 date?

15 MR. SCHOEN: I certainly hope so, Your Honor.

16 THE COURT: I hope so too.

17 And let's see. Who else? Mr. Indelicato?

18 MR. REEVE: Yes, Your Honor. We would hope to  
19 comply with that schedule as well.

20 THE COURT: Okay. Mr. Dinnerstein?

21 MR. DINNERSTEIN: Yes, Your Honor. We expect to be  
22 able to comply with the August 21st date, Your Honor.

23 THE COURT: Okay. And Mr. Ginsberg?

24 MR. GINSBERG: Yes, Your Honor. We have made our  
25 submission already, quite long ago.

1 THE COURT: You have?

2 MR. GINSBERG: Yes.

3 THE COURT: We have Mr. Aiello and Mr. Basciano's  
4 done.

5 The other three were the later indicted, I guess it  
6 is, for the defendants on the death eligible charge remain to  
7 be submitted and there may be supplements.

8 MR. SAVITT: Yes, Your Honor.

9 THE COURT: Then you are going to take about a  
10 month, do you think?

11 MR. CHAN: That's correct.

12 THE COURT: All right. I need to be able to plan.  
13 Have I given you a date for a trial yet?

14 MR. CHAN: You have; April 16th.

15 THE COURT: 2007.

16 What we may do, everything depends on whether the  
17 Attorney General decides to seek the death penalty against one  
18 or more of the defendants who are death eligible. In that  
19 case it is likely there will be a motion for severance and I  
20 will deal with that.

21 But should the Attorney General not seek the death  
22 penalty, I would expect to try all the defendants together  
23 because I don't have time to do it any other way. There is  
24 plenty of room in the courtroom.

25 So just everyone put down on your schedule, on your

1 calendar, that we are going to try this case in April of 2007.

2 About how long do you think the case will take to  
3 try?

4 MR. CHAN: About two-and-a-half months.

5 THE COURT: Two-and-a-half months.

6 You are going to seek an anonymous, semi-sequestered  
7 jury?

8 MR. CHAN: Yes, Your Honor.

9 THE COURT: Assuming that I grant your motion in  
10 that regard, that would take us into August.

11 Would that include jury selection?

12 MR. CHAN: I don't think so. I think jury selection  
13 in this case would take an extra long time because it would  
14 have to be -- I guess we are assuming it is not a death  
15 penalty.

16 THE COURT: I am assuming it is not a death penalty.

17 MR. CHAN: Then it would include jury selection.

18 THE COURT: So we are talking about into July,  
19 basically.

20 Okay. Just block out the months of mid-April  
21 through mid-July. Don't plan any long European vacations or  
22 any short European vacations during that period.

23 All right. That gives us a sense. Then we will  
24 rearrange matters with the calendar, depending upon how the  
25 Attorney General comes down on the issue at hand.

1           Okay. Is there anything from the defense, any  
2 clarification anyone needs, any questions that have come up  
3 that we can deal with today?

4           MR. GINSBERG: Clarification, Your Honor.

5           THE COURT: Yes?

6           MR. GINSBERG: A while back there was a matter  
7 pending before Your Honor that had been brought on by  
8 Mr. Cicale's lawyers regarding the New York City Police  
9 Department homicide file. There will be some litigation  
10 begun. There were some letters written back and forth. It is  
11 not clear to me from the letters whether Your Honor actually  
12 had received the file because the legal counsel for the New  
13 York City Police Department become involved.

14           In any event, it is my intention, with the Court's  
15 permission, to pick up where that left off. I just didn't  
16 want to have a letter writing campaign. I thought it would be  
17 easier if I just raised it with the Court, ask permission to  
18 essentially intervene, although I would still have the same  
19 right that Mr. Cicale had at the time. I would like to make a  
20 submission to the Court and then eventually the Court can  
21 schedule either a hearing on the matter or make a  
22 determination on the papers.

23           THE COURT: Why don't you make a written submission  
24 so the government can respond. I think I have some of those  
25 records that have been provided to me by the New York City



1 Police Department. To the extent that you believe you have  
2 the right to, or need for any of these materials, you should  
3 bring that to my attention in writing. Then we will have  
4 whatever back and forth we need to have. I will make a  
5 decision.

6 MR. GINSBERG: That's fine.

7 THE COURT: I'm sure I didn't make a decision on  
8 Mr. Cicale's application.

9 MR. GINSBERG: No, I believe you didn't.

10 THE COURT: It became moot.

11 MR. GINSBERG: Yes. It was sort of a two-pronged  
12 determination. One, whether it would be turned over to the  
13 defense or, if not, short of that, whether the Court would  
14 then review the material and make a determination.

15 THE COURT: In camera.

16 MR. CHAN: I think for the record, Judge, when that  
17 motion was originally filed it was litigated. We submitted to  
18 you the file itself for your review and then --

19 THE COURT: Then I had --

20 MR. CHAN: -- circumstances changed and there was no  
21 reason to rule on it.

22 THE COURT: Okay. That's fine. I am happy to  
23 consider whatever you submit.

24 MR. GINSBERG: Thank you.

25 THE COURT: Okay.

1 MR. SCHOEN: The Court made a comment earlier that  
2 it intends to try all of the defendants together absent some  
3 distinction between defendants with respect to the death  
4 penalty. I just want to make the point, I didn't want my  
5 silence to be acquiescence in that as a general ruling. We  
6 probably will be making a severance motion on other grounds.

7 THE COURT: That's fine.

8 MR. SCHOEN: I didn't want to hear later that you  
9 were quiet at the time when I told you and we will try them  
10 together.

11 THE COURT: I am not prejudging any motion that you  
12 might desire to make and we have plenty of time, obviously. I  
13 just wanted you to know that it is my predisposition, all  
14 things being equal, that I try all of the defendants together  
15 on one indictment, as long as I don't have more than seven or  
16 eight. There are six here. So that's how I intend to handle  
17 it, assuming there is no certification for the death penalty  
18 by the Attorney General. That presupposes a lot, but I have  
19 to be able to plan since I have a number of these cases to  
20 calendar for trial.

21 Okay. Does anybody have anything else for today?

22 I guess --

23 MR. STORCH: One minor housekeeping matter, Your  
24 Honor. That's the reconsidering issue in terms of separations  
25 that are occurring with the Metropolitan Detention Center.

1 It's come to my attention that the MDC, on information and  
2 belief, they are not the ones who are separating the  
3 defendants, Your Honor. I believe Mr. Seigel on behalf of the  
4 government last time indicated that he thought it was the  
5 institution that had somehow on their own instituted some sort  
6 of separation. I have been told that it's actually coming  
7 from the government.

8 I would just put it in writing, I guess, so perhaps  
9 the government can respond and perhaps Your Honor can rule on  
10 this. It has just become impossible to visit clients and have  
11 a meaningful legal visit, forget about even codefendant  
12 meetings. Just there are so many permutations of so many  
13 various steps, Your Honor. Even if we go to the jail at 9:00  
14 o'clock in the morning sometimes, Your Honor, we have to wait  
15 until 5:00 in the afternoon. It is just -- just becomes an  
16 impossible task to even have a basic legal visit.

17 I would just ask that the government really review  
18 which separations they deem necessary and perhaps on their own  
19 sort of lift these separations.

20 THE COURT: Yes. Are you aware --

21 MR. CHAN: I am. Mr. Seigel has informed me that he  
22 is discussing with the MDC about which separations can or  
23 cannot be lifted at this time. They are in negotiations about  
24 that currently.

25 THE COURT: He is in negotiation with the MDC?

1 MR. CHAN: Correct.

2 THE COURT: Okay.

3 MR. CHAN: Or discussion, I should say, as opposed  
4 to negotiation.

5 THE COURT: Call it what you will.

6 How soon will we know so that I don't have to -- I  
7 am trying to minimize paperwork. The federal government has a  
8 Paperwork Reduction Act. Have you ever heard of that?

9 MR. CHAN: Yes.

10 THE COURT: It only applies --

11 MR. CHAN: Vaguely.

12 THE COURT: It applies to the executive branch and  
13 when I was with the executive branch I was very much aware of  
14 the Paperwork Reduction Act. I am thinking of implementing it  
15 sua sponte here. One way of implementing it is to ask you to  
16 demur for just a moment while the government finds out how  
17 much of these separations need to remain in effect and how  
18 many of them don't. Then if you could inform the parties and  
19 the Court, if that's not satisfactory to any of the parties,  
20 they can then contact me.

21 MR. CHAN: Yes, Your Honor.

22 THE COURT: All right. How soon will I know?

23 MR. CHAN: One week.

24 THE COURT: One week.

25 Wait a week, please. If it still hasn't worked out

1 in such a way that you can efficiently fulfill your  
2 responsibilities to your client, you can let me know that.

3 MR. STORCH: Thank you, Your Honor.

4 THE COURT: Okay. Is there anything further for  
5 today?

6 MR. CHAN: The government asks that time be excluded  
7 between now -- and we actually don't have another  
8 date -- between now and the trial date, but I suppose we  
9 should set a trial date.

10 THE COURT: We are not even at a point for motions  
11 because we are waiting on the Attorney General.

12 Well, August 21st -- why don't we set a date in  
13 September. September 14th, at 9:30. It is a Thursday. Are  
14 you all available?

15 MR. SERCARZ: Your Honor, for Anthony Donato,  
16 Maurice Sercarz.

17 I am starting a trial September 11th, but if  
18 Mr. Dinnerstein can cover, I don't see any need --

19 THE COURT: That's fine.

20 MR. DINNERSTEIN: I expect, Your Honor, to be here  
21 on September 14th.

22 THE COURT: Okay. Let's handle it that way. The  
23 matter will still be under review by either  
24 the -- certification will be under review by either the US  
25 Attorney in Brooklyn or it may have been sent over to the

1 Attorney General and we can have a status report.

2 I would also like to know at that time what the  
3 Attorney General's potential schedule is because I am working  
4 back from April and that, assuming that we work back from  
5 April, a decision in January is going to put the squeeze on us  
6 for trial and I really would like to get matters moving.

7 MR. CHAN: Yes, Your Honor.

8 THE COURT: I understand there are many of these  
9 cases down there, but this case has a -- this is an '05 case.  
10 We are in '06. By that time it will be '07. I need to move  
11 the case.

12 All right. Please be prepared to let me know what  
13 they -- what the expectation is of when the Attorney General  
14 will have a response.

15 MR. CHAN: Yes, Your Honor.

16 THE COURT: All right. Anything further for today?

17 MR. SAVITT: No, Your Honor.

18 THE COURT: I am going to exclude the time between  
19 today and September 14, 2006 in the interests of justice as  
20 this has been designated a complex case and in view of the  
21 fact that there is a pending certification question as to the  
22 death penalty.

23 Have a nice day.

24 (Matter concludes.)

25